

ATTACHMENT A - APPEALS (REVISED)

Appeals Relating to Competitive Selection of One-Stop Operator/Service Provider

MassWorkforce Issuance 100.DCS 01-102 Procurement and Contracting
<http://www.mass.gov/massworkforce/docs/issuances/wioa-policy/01-102.pdf> at Attachment C (D) 5 mandates that the review and evaluation of a solicitation requires a description of the appeal/protest process. As such, and for purposes of the Competitive Selection of the One-Stop Operator/Service Provider: **LOCAL AREAS MUST FOLLOW THEIR LOCAL PROCESS (EXCEPT AS DIRECTED BELOW) AND IN ABSENCE OF A FORMAL POLICY, MUST FOLLOW THIS PROCESS.**

APPEAL of LOCAL WORKFORCE BOARD COMPETITIVE SELECTION of LOCAL ONE-STOP OPERATOR/SERVICE PROVIDER

1. APPEAL TO LOCAL BOARD

- If the Local Board has made determination of award to the dissatisfaction of a bidder, that bidder may appeal/protest to the Local Complaint Officer (CO) within **10 business days** of receipt of notification of non-award (*provide name and address – if a Local Board staff is named as the CO, then an alternative non- Board member CO must be named*).
- The Local CO must make a written determination within **20 days** of receipt of the appeal/protest.
- The local CO may choose to make a determination based solely on the information included in the case file or conduct further investigation before issuing a written determination.
- If the CO has made a written request to the appellant (or the appellant's authorized representative) for additional information, the **20 day period** does not begin until the requested information has been received by the local CO.
- If the CO is unable to contact the appellant for the purposes of obtaining additional information needed to resolve a complaint, a written request for information must be sent via ***certified mail*** or through some other form of communication where receipt can be verified. If a complainant does not respond, the CO must inform the complainant in writing that the matter is considered **resolved**.
- The local CO may also choose to resolve the complaint by convening a local hearing. Only the designated local CO or authorized back-up may preside at a local complaint hearing. If the local CO deems that a hearing is necessary, the local CO will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of certain conditions of the hearing process that include:
 - ☐ the date, time and location of the hearing,
 - ☐ instruction that the local CO will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed, and

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☐ instruction that the local CO must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

***NOTE:** For clarity it must be stated that an administrative hearing is not the same as a Court of Law.

Technical rules of evidence *do not apply*. It is up to the local CO to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

- The CO must provide the complainant with a written determination. The CO must include the right to appeal within the written determination. Notification must be given that the complainant may submit a request for a State level appeal and/or hearing and that it must be made in writing **within 10 business days** of the receipt of the local determination.

2. DECISION OF LOCAL BOARD:

Should the Local Board decide in favor of the appellant, the Department of Career Services (DCS), in the exercise of its authority pursuant to the Uniform Circular 2.CFR 200 and as designated State Workforce Agency (SWA) and overseer of the Massachusetts Workforce Development System, designates the following options as sole remedies to appeal orders delivered by the Local Workforce Board:

1. Re-bid the procurement of the one-stop operator in compliance with the requirements of WIOA, local procurement rules and this policy (100 DCS 03.105)
2. Re-panel an entirely new group of raters and bid reviewers representative of the WIOA Local Board and business partners as new reviewers of the original bid proposals/documents (only) and render a decision accompanied by full supporting documentation.

NOTE: Upon completion of the re-bid or re-panel process, the resulting recommendation must be voted upon at a local WIOA board meeting that includes an agenda listing of this item and with a quorum of the full WIOA Local Board present and voting at the meeting.

Documentation must reflect and meet the standards of execution of process and transparency, meet Open Meeting law compliance, observe conflict of interest firewalls and maintain meeting minutes and rating documents. This documentation must be maintained for DCS review.

Written DCS approval is required before contracting with a career center provider on any procurement that has been subject to an appeal to the local level.

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3. APPEAL TO STATE BOARD:

An entity that bid and was not selected under a competitive process (as required in WIOA §107(10)(A) and 20 CFR 678.605) by the Local Board as Local One-Stop Operator/Service Provider may appeal that determination to the Local Board following local procurement requirements. If the local determination to uphold the denial of the award does not resolve the appeal to the satisfaction of the appellant, the appellant may request a state-level appeal and/or formal appeal hearing in writing within **10 business days** of receiving the denial.

The request for appeal and/or formal appeal hearing must be sent to:
Office of Director
Massachusetts Workforce Development Board
Charles F. Hurley Building
19 Staniford Street, 4th Floor
Boston, MA 02114

If the appellant chooses to request an appeal without specifically requesting a hearing, the State Board, or its designee (Authorized State Official - ASO), may decide to either make a determination based solely on the information included in the case file or conduct further investigation and issue a written determination without scheduling a formal hearing.

In either case, the State Board/ASO must submit a written determination to the appellant within **30 days** of receipt of the original appeal request or **30 days** after having received additional information from further investigation or **30 days** after a formal hearing **request**.

If the State Board/ASO has made a written request for information to the appellant or the appellant's authorized representative, and they do not respond within the given time frame the appeal is considered **resolved**.

If the State Board/ASO deems that a formal hearing is necessary or if the appellant specifically requests such a hearing, the State Board/ASO will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of the following conditions of the hearing process.

Formal Hearing Process

The notice must inform the parties of the following conditions of the hearing process:

- The date, time and location of the hearing.
- Instruction that the State Board/ASO will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed.

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- Instruction that the State Board/ASO must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

* For clarity it must be noted that an administrative hearing is not the same as a Court of Law. Technical rules of evidence *do not apply*. It is up to the State Board/ASO to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State Board/ASO:

- May decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing.
- May decide to conduct a hearing on more than one appellant if the issues are related.
- May permit (at his/her discretion) the participation of interested parties (*amicus curiae*) with respect to specific legal or factual issues relevant to the complaint/appeal.
- May choose to conduct the hearing at a single location convenient to all parties (preferred) or, if that would represent a hardship for one or more parties, the State Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must conduct the hearing *and* issue a written determination to the appellant, the respondent and any other participating interested parties within **30 days** from the date the hearing was requested. The State Board/s/ASO's written determination must include:
 - ☐ the results of the State level investigation;
 - ☐ conclusions reached on the appeal;
 - ☐ an explanation as to why the decision was upheld or not upheld;

4. DECISION OF STATE BOARD:

Should the state board decide in favor of the appellant, in the exercise of its authority, the Massachusetts Workforce Development Board (MWDB) will remand decisions on appeals of Lead Operator of Career Center/Service Provider selections to the Department of Career Services for further action as the overseer of the Massachusetts Workforce Development System.

The Department of Career Services (DCS), in the exercise of its authority pursuant to the Uniform Circular 2.CFR 200 and as designated State Workforce Agency (SWA) and overseer of the Massachusetts Workforce Development System, designates the following local options as remedies to appeal orders remanded by the Massachusetts Workforce Development Board (MWDB) to DCS for action:

1. Re-bid the procurement of the one-stop operator in compliance with the requirements of WIOA, local procurement rules and this policy (100 DCS 03.105)

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2. Re-panel an entirely new group of raters and bid reviewers representative of the WIOA Local Board and business partners as new reviewers of the original bid proposals/documents (only) and render a decision accompanied by full supporting documentation.

NOTE: Upon completion of the re-bid or re-panel process, the resulting recommendation must be voted upon at a local WIOA board meeting that includes an agenda listing of this item and with a quorum of the full WIOA Local Board present and voting at the meeting.

Documentation must reflect and meet the standards of execution of process and transparency, meet Open Meeting law compliance, observe conflict of interest firewalls and maintain meeting minutes and rating documents. This documentation must be maintained for DCS review.

Written DCS approval is required before contracting with a career center provider on any procurement that has been subject to an appeal to the state level.

A decision under this state appeal process is final and **may not** be appealed to the U.S. Secretary of Labor.